IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 10 of 2001

in

COMPANY APPLICATION No 210 of 2000
In
COMPANY PETITION NO.205 of 1996

with

CIVIL APPLICATION No 37 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

O.L. OF G.S.T.C.LTD.

Versus

DHANJI KRISHNAJI

Appearance:

1. O.J.APPEAL No. 10 of 2001

MR RM DESAI for appellant No. 1

PARTY-IN-PERSON for Respondent No. 1
Mr.D.S.Vasavada for Respondent No. 2
Mr.R.M.Chauhan,learned AGP for Respondent No. 3
Mr.R.M.Desai for Respondent No. 4

2. CIVIL APPLICATION No. 37 of 2001
Mr.R.M.Desai for applicant No. 1
PARTY-IN-PERSON for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 06/03/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

1. Heard Mr. R.M.Desai, learned advocate, who appeared for the appellant - original respondent, namely, Liquidator of the Gujarat State Textile Corporation Ltd. and respondent in person Shri Dhanaji Krishnaji and Mr. Vasavada, learned advocate, who appeared on behalf of Textile Labour Association - respondent No.2 herein and Mr.R.M.Chauhan, learned AGP for respondent No.3. During hearing Mr.Desai appearing for the appellant has taken us through the order under challenge passed by the learned Company Judge on 15.11.2000 while deciding Company Application No.210 of 2000 filed by the respondent No.1 workman as well as Company Application filed by the respondent workman before this Court being Company Application No.210 of 2000 in Company Petition No.205 of 1996 as well as the affidavit filed by Shri Dhanaji Krishnaji dated 24.2.2003 with documents attached thereto. Mr.Desai has also taken us through certain provisions of Gujarat Closed Textile Undertakings (Nationalization) Act, 1986 (hereinafter referred to as 'the Act'). By way of paper book, the appellant has also produced the judgment and award passed by the Industrial Court, Ahmedabad in Appeal No.54/94 filed by the respondent workman dated 17.6.97 and the other documents attached to the paper book, including the order passed by brother Justice K.M.Mehta dated 5.4.2000 in Company Application No.428 of 1999.

2. As the respondent No.1 workman was appearing in person, we have requested Mr. Vasavada to provide assistance to him in respect of his claim and as Mr. Vasavada was representing in this Appeal on behalf of Textile Labour Association, he has readily accepted the request made by us and respondent No.1 in person Shri

Dhanaji Krishnaji had also agreed that he will hand over all the papers to Shri Vasavada and accordingly earlier during hearing we have adjourned the matter to enable Mr. Vasavada to take all papers from the appellant and make submission in this Appeal on behalf of respondent No.1 as well as on behalf of T.L.A. While adjourning the matter we had also requested Mr. Desai to get full information from the concerned authority, to find out that after the Unit of Manjushree Textile Mills was wound up, whether the employees/workmen attached to the said Unit were taken in service, after the enactment of the Act, which came into effect from 8.11.1985, and we have also requested Mr. Vasavada, after taking instruction from respondent No.1, to show that whether the appellant had appointed any workman of the Unit in service even after the said Unit of Manjushree Textile Mills was closed due to passing of order of winding up of the Company and due to the enactment of the Act and to give details in respect of the payments made by the Gujarat State Textile Corporation even after the winding up order was passed and in what manner the service benefits were given, including the wages, to those workers. Accordingly respondent workman Shri Dhanaji Krishnaji had submitted affidavit dated 24.2.2003 with certain documents and one of the document is also settlement recorded by the Industrial Court, Ahmedabad dated 3.9.96 between the General Manager of the appellant - Gujarat State Textile Corporation and respondent No.2, namely, Textile Labour Association, Ahmedabad and the identity cards of ex workmen Shri Pashabhai Ukabhai and Shri Bhikhbhai Manabhai and the orders passed by the appellant - Gujarat State Textile Corporation Ltd. dated 19.10.96 and 22.10.96 respectively.

3. Mr.Desai has also placed on our hand short note in respect of workman Shri Dhanaji Krishnaji with all particulars about the joining of the Manjushree Textile Mills as well as the order of dismissal passed by the ex Management of the said Mill and the amount paid to workmen with all other details. The said statement is under the signature of Shri S.K. Parikh of the appellant - Gujarat State Textile Corporation Ltd. Mr.Desai while arguing the Appeal has vehemently urged that admittedly the respondent workman Shri Dhanaji Krishnaji was dismissed from service by the old Management of Manjushree Textile Mills as per order dated 17.1.1984 and the said workman had joined the Manjushree Textile Mills on 4.2.1964. The said Manjushree Textile Mills was closed from 17.6.1984 and as the said Mill was closed in view of the order of winding up, all the workmen attached to Manjushree Textile Mills were ceased to be employees

of the said Mill and in the present case as the workman was dismissed from service by the old Management from 17.1.1984 and when the said old Management was closed on 17.6.1984 all the employees attached to the Manjushree Textile Mills were ceased to be the employees of the said Management. Accordingly it is his submission that the workman was not taken in service after the appellant -Gujarat State Textile Corporation Ltd. has taken over the Unit of Manjushree Textile Mills and even after the said Mill was taken over by the appellant, some of the workers were appointed by the appellant - Corporation by way of fresh appointment from the workmen, who were previously working with the old Management and admittedly the respondent workman was not appointed even after the said Unit of the Mill was taken over by the Corporation and accordingly, there is no liability even in respect of backwages, though the Labour Court has granted relief in favour of the respondent - workman regarding backwages as the Labour Court has not passed order of reinstatement of the respondent - workman in service. As observed earlier and as found from the papers, the respondent workman was working with Manjushree Textile Mills since 1964 and the services of respondent No.1 was terminated by the Management of Manjushree Textile Mills on 17.1.84. The workman had challenged the said order of termination by resorting to the provisions of the Bombay Industrial Relations Act, 1946 before the Labour Court and the said application was registered being T. Application No.120 of 1984. The Labour Court has while considering the case put forward by the parties set aside the order of dismissal passed by the Management. However, the Labour Court has not reinstated the workman in service. As found from the record, that the Manjushree Textile Mills was closed in view of the winding up order passed by the High Court and as found that Manjushree Textile Mills was closed from 17.6.1984. The respondent workman being aggrieved by the order passed by the Labour Court, wherein the Labour Court has set aside the dismissal order passed by the Management and wherein the Labour Court has not granted relief in favour of the workman regarding reinstatement in service, had challenged the said order before the Industrial Court. In view of the provisions of the Gujarat Closed Textile Undertakings (Nationalization) Act, 1986, the working of the Mill, Namely, Manjushree Textile Mills was taken over by the Gujarat State Textile Corporation Ltd. (hereinafter referred to as "GSTC") and GSTC is the respondent in the Appeal filed by the workman before the Industrial Court. As found from the record that several petitions were filed before the High Court being Special Civil Applications Nos.5498/89, 7796/88, 4406/90 and 3585/88.

So far as Special Civil Application No.5498/89 is concerned, the same is filed by the respondent workman. The Division Bench had, as per order dated 1.9.93 while dismissing the petitions, in term observed that pursuance of the interim direction of the court, certain amount has been deposited by the GSTC and these amounts were directed to be paid to the concerned workman by A/C. Payee Cheque. So far as respondent workman is concerned in Special Civil Application No.5498/89, the amount was reflected as a sum of Rs.15,995.96 Ps. and the Division Bench has observed that it would be open to the workman to challenge the order of the Commissioner of Payments before the appropriate forum in accordance with law and accordingly the respondent workman had moved the Industrial Court and the award of the Labour Court refusing reinstatement was challenged by way of Appeal before the Industrial Court. The Industrial Court on considering the Appeal and on examining the order passed by the Labour Court as per judgment dated 17.6.97 has confirmed the order of the Labour Court regarding setting aside of the order of dismissal passed by the Management against the workman. However, the Industrial Court directed that so far as the backwages are concerned, it would be the liability of the old management and the Payment Commissioner is liable to make the payment. With regard to the direction of reinstatement of the workman, the appellate court has given relief to the workman that as the order of dismissal was set aside, the workman was on service and the workman was entitled to whatever benefit that the other employees were getting. The Industrial Court has in fact observed that as the order of dismissal was set aside, the workman was to be considered on duty and the workman is entitled to the benefits, which were available to the other workman in view of an agreement arrived at between the Union and the GSTC and if the workman could not be reinstated in service, the workman is entitled to the benefit pursuant to the agrement arrived at between the Union and the GSTC.

4. Mr.Desai, learned advocate for the appellant, has during his submission taken us through the order under challenge as well as the order passed by the Industrial Court and also taken us through the provisions of the Gujarat Closed Textile Undertakings (Nationalization) Act, 1986 (herein after referred to as 'the Act'). The said Act came into force with effect from 8.11.1985. Clause (c) of Section 2 defines that "Commissioner" means a Commissioner of Payments appointed under Section 12. Clause (d) of Section 2 defines that "Corporation" means the Gujarat State Textile Corporation Ltd. formed and

registered under the Companies Act, 1956. Chapter II deals with acquisition of the rights of owners of specified Textile Undertakings. Sub-clause (2) of Section 3 reads as under:-

"The specified textile undertaking which stands vested in the State Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vest in, the Corporation."

Section 5 deals with the liabilities of the owner. Sub-clause (1) of Section 5 reads as under:

"(1) Every liability of the owner of the specified textile undertaking in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the State Government or the Corporation"

Section 6 provides for contribution by State Government. It provides that an amount equal to the value of the assets of the specified textile undertaking transferred to and vested in, the Corporation under sub-section (2) of section 3, shall be deemed to be the contribution made by the State Government to the Corporation. Mr. Desai has while arguing the Appeal vehemently relied upon Section 11 which pertains to provision relating to Employees of specified Textile Undertakings. Section 11 reads as under:-

"11. Employment of certain Employees - Where services of a person who is a workman within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), and who has been, immediately before the appointed day, employed in the specified textile undertaking, are in the opinion of the Corporation necessary having regard to the requirements of the units of the Corporation formed as a result of reorganisation and reconstruction, of specified textile undertakings, he shall become, from the date of his appointment by the Corporation, an employee of the Corporation and shall hold office or service in the Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such specified textile undertaking had not been transferred to, and vested in, the Corporation, and continue to do so

unless and until his employment in such Corporation is duly terminated or until his remuneration and terms and conditions of employment are duly altered by the Corporation;

(2) Where services of a person who is not a workman within the meaning of the Industrial Disputes Act, 1947, (14 of 1947), and who has been, immediately before the appointed day, employed in the specified textile undertaking, are in the opinion of the Corporation necessary having regard to the requirements of the units of the Corporation formed as a result of reorganisation and reconstruction of specified textile undertaking he shall become, from the date of his appointment by the Corporation, an employee of the Corporation and shall hold office or service in the Corporation on such terms and conditions of employment as may be determined by the Corporation."

Sub-clause (a) of clause (3) of Section 11 provides that the services of every person employed by the owner before the appointed day shall stand terminated. Sub-clause (b) of clause (3) of Section 11 provides that a person whose services stand terminated under sub-clause(i) of clause (a) shall not be entitled to claim employment in the Corporation as of right. Mr. Desai has also taken us through the Schedule attached to the Act and at Item No.4 of the said Schedule, the name of Manjushree Textiles of Ahmedabad is found and the amount which was determined by way of compensation is Rs.7,34,00,000/--. The Second Schedule in Category I includes all dues including gratuity of employees in the specified textile undertaking.

5. It is true that the Textile Labour Association has not challenged the order passed by the Industrial Court and the said order of the Industrial Court has become final and the same is binding to the appellant. However, it is the contention of Mr.Desai while taking us through the order of the Industrial Court, which we have already referred to earlier, that the Industrial Court has while dealing with the Appeal filed by the respondent workman in term confirmed the order of Labour Court setting aside the dismissal order passed by the Management against the delinquent and with regard to the reinstatement of the workman, the Industrial Court has given direction, which we have referred to earlier. It is an admitted fact that when the said Mill was, under

the order of the High Court, wound up, the effect would be that all the employees were no more in service under the said Management. It is also an admitted fact that the dismissal order passed by the Management was ultimately set aside by the Labour Court and the Labour Court has not granted any relief regarding reinstatement and as observed earlier, the Mill was closed in view of the winding up order passed by the High Court. In view of the Gujarat Act No.10 of 1986, which has come into effect from 8.11.85, Manjushree Textile Mills was handled by the GSTC. It is also the case of the Corporation that after the said Mill was taken over by the Corporation for the running of the Mill certain workers, who were previously working with the said Management, were retained. Though the respondent workman was working with the said Mill since 1964, the old management had terminated the services of the workman with effect from 17.1.84. It is an admitted fact that even after GSTC has taken over the said Unit of Manjushree Textile Mills, the respondent workman was not appointed afresh and when the GSTC was running the said Unit of the Manjushree Textile Mills, the respondent workman was not in service.

6. As found from the reply affidavit filed by the workman, wherein he has annexed certain documents including the settlement arrived at between the GSTC with the Textile Labour Association and Mr. Vasavada has taken us through the said settlement dated 3.9.96. According to Mr.Vasavada that the respondent workman was entitled as per the said settlement as provided in Clause 3. Clause 3 reads as under:-

"3. The Special Voluntary Retirement Scheme and its conditions for the permanent workers shall be as under:

(A) A worker shall make an application to the company in the form prescribed by the recognised union.

(B) The retiring permanent workers shall be paid the following benefits after the application is accepted.

(B1) 35 days' dole (compensation) per year from the date of joining the service and Rs.2500/(Rupees Two Thousand Five Hundred only) per year for the remaining service till superannuation or 25 days' pay per year for the remaining service whichever amount is more shall be paid. However, minimum amount of incentive

ofRs.25,000/-- or the pay of 250 days, whichever is more shall be paid. The service, from the date of joining till he is relieved under this agreement, shall be treated as a continuous service with closing period.

Calculation:

Pay, D.A., ad hoc and the amount of H.R.A. shall be included for a day's calculation.

(B2) Gratuity amount with latest revision under Payment of Gratuity Act.

(B3) Due amount of earned leave and amount of unavailed earned leave falling to one's share for the year 1996.

(B4) Amount of unavailed casual leave for the yea 1996.

(B5) Amount of outstanding pay.

(B6) Amount of bonus admissible to the worker/employee.

Note: More than 6 months' time in a year shall be treated as a whole year. For the purpose of this calculation, Rs.350/- basic shall be considered for the worker/employee having basic pay less than Rs.350/-."

6.1 The said settlement was presented before the Industrial Court, Ahmedabad in a proceedings between Manjushree Textile Mills of GSTC and the T.L.A. On going through the said settlement it transpires that after the GSTC has taken over the said Unit of Manjushree Textile Mills in view of the enactment of Gujarat Act 10 of 1986, which we have already referred to earlier and by virtue of the appointment made by the Corporation from the employees who were previously working with the Manjushree Textile Mills, admittedly the respondent - workman was not appointed by the Corporation and as per the settlement, as found from the affidavit filed by the respondent workman, even in respect of those workers, who have been appointed by the GSTC, the Corporation had acted upon the said settlement and certain amounts were paid to the workers. The document dated 19.10.96, which is at page 21, pertains to one workman Shri Pashabhai Ukabhai, who was working at the relevant time in Spinning

Department. He was paid as per the settlement a total amount of Rs.1,85,955.15 Ps., which includes gratuity etc. At page 23 of the said affidavit there is another document dated 22.10.96 in respect of the discharge order passed against workman Shri Bhikhbhai Manabhai, who was also working in the Spinning Department, as a reliever and as per the settlement, the Corporation has paid a total amount of Rs.17,97,926/--, covering the amount of gratuity, compensation amount and the compensation in respect of the remaining period of service. It is further found from the reply affidavit filed by the workman that it is his case that similarly situated persons like respondent workman have been paid the amount considering the original date of appointment in service and also more than 1800 workmen of the Manjushree Textile Mills have been granted settlement benefit considering the date of earlier appointment with the Company.

7. In light of the contentions raised before us and on close scrutiny of the order passed by the Industrial Court and the order challenge passed by the learned Company Judge, it is an admitted fact that no fresh appointment was given by the GSTC to the respondent No.1 and when the settlement was arrived at between the GSTC and the TLA, the said settlement was only in respect of the workers/employees, who have been appointed afresh by the GSTC after the said Manjushree Textile Mills was taken over by the GSTC and as per the said settlement even the workers, who were appointed afresh by the GSTC, namely, Shri Pashabhai Ukabhai and Shri Bhikhbhai Manabhai have been paid sum of Rs.1,85,955-15 Ps. and Rs.1,79,792/-. These two persons were appointed by GSTC afresh and as per settlement arrived at, as observed earlier, aforestated amount was paid to them and the said amount was paid to them considering the length of service from the date of their joining with the Manjushree Textile Mills.

8. In short, in light of the discussion and considering the effect of winding up order passed in respect of Manjushree Textile Mills, where the respondent No.1 was working as a workman since 1964 and in view of the dismissal order passed by the old Management and though the Labour Court has set aside the order of dismissal passed by the old Management, no relief of reinstatement was granted in favour of the workman and the effect of winding up order is that services of all the employees working with the Manjushree Textile Mills came to an end and further when the appellant GSTC had taken over the said Mill, in view of the enactment of the Act, no fresh appointment was made and the respondent

No.1 was not in service of the GSTC. In light of the settlement arrived at between GSTC and the TLA respondent No.2 herein, the same is only applied to those workers, who have been appointed by the GSTC afresh for the running of the Unit of the Manjushree Textile Mills and even those workers, namely, Shri Pashabhai Ukabhai and Shri Bhikhbhai Manabhai were paid the amount, as per the settlement, considering their date of appointment earlier with Manjushree Textile Mills. Accordingly, those workers, who were appointed afresh by the GSTC, as per settlement, were entitled to the amount considering the length of service, when they joined the services in the old Management. This was done as per the order passed by the Industrial Court in an Appeal filed by the respondent workman, wherein the Industrial Court has confirmed the order of the Labour Court, wherein the Labour Court has set aside the order of dismissal passed by the old Management dismissing the workman from the services and in respect of the prayer regarding reinstatement in service, the Industrial Court has partly granted relief and as per the relief granted by the Industrial Court, the direction was given to the GSTC that if the workman could not be reinstated in service, then the workman is required to be provided as per settlement arrived at between the representative Union and the GSTC and such benefit is to be provided to the workman under the provisions of Gujarat Closed Textile Undertakings (Nationalisation) Act, 1986, which came into force with effect from 8.11.85. As found, the respondent workman was not granted reinstatement in service by the Labour Court and even after the Unit of Manjushree Textile Mills was taken over by the appellant GSTC, no fresh appointment was given to the respondent workman and the settlement, on which Mr.Vasavada has placed reliance, is not applicable to the present respondent - workman, as the settlement was arrived at between GSTC and the TLA in respect of those workers who were appointed afresh by the appellant GSTC, when the Unit of Manjushree Textile Mills was taken over by the appellant. As observed earlier, a sum of Rs.26,000/-- is paid to the respondent workman by virtue of the order passed by the Court excluding the amount of Provident Fund. We are told that the P.F. amount is also lying with the authority under the Provident Fund Act. In our view, the respondent No.1 is not entitled to the claim made, in light of the discussion made hereinabove. Once the settlement is arrived at between the GSTC and the TLA, the same only pertains to those workman, who have been appointed by the GSTC afresh when the Manjushree Textile Mills was taken over by the appellant GSTC and as per the settlement, even those workers, who have been appointed afresh, have

been paid as per the settlement by considering length of service i.e. the date of joining earlier with the old Management and even those workmen had been paid the amount of Rs.1,85,955-15 Ps. and Rs.1,79,792/-. In light of such finding recorded by us Mr. Vasavada, learned advocate, appearing on behalf of TLA as well as respondent No.1 workman after taking instruction from the respondent No.1, who is also present before us during hearing, has submitted that in view of the fact that the dismissal order of the workman passed by the old Management was set aside by the Labour Court and though no reinstatement order was passed by the Labour Court and considering the fact that the dismissal order was set aside, he may be paid some ex gratia payment, which were paid to those workers, who have been appointed by the GSTC afresh and who were previously working with the old Management and accordingly Mr. Vasavada has with the consent of the respondent No.1, who is present before us, requested us that since he was in service with the old Management since 1964 and he worked with the said Mill upto 17.1.1984 and when the order of dismissal passed by the old Management was held to be illegal by the Labour Court, some ex gratia payment be made to him. As observed earlier that no fresh appointment was given to the respondent workman when the appellant Corporation has taken over the Unit of Manjushree Textile Mills and no relief for reinstatement was granted in favour of the respondent workman by the Labour Court. It is an admitted fact that in view of the winding up order passed, services of all the workmen/employees came to an end.

9. To consider the submission of Mr. Vasavada for ex gratia payment, we have to keep in mind the fact that the respondent workman was working with the old Management since 1964 and he was workman with the said old management upto 16.1.1984, as the workman was dismissed from service by the old Management on 17.1.1984. Though dismissal order was held to be illegal, but by that time the old Management went into liquidation. It is unfortunate that when the old Management went into liquidation, the respondent workman was not in service and subsequently as per order passed by the Labour Court, the said dismissal order was held to be illegal. If the respondent workman was in service with the old Management, it was possible that he would have got fresh appointment by the GSTC and he would have an opportunity to work. In our view, keeping these facts in our mind, some amount by way of ex gratia payment is required to be given and it will serve the ends of justice. As observed earlier, even considering the

length of service, fresh appointees have been paid a sum of Rs. Rs.1,85,955-15 Ps. and Rs.1,79,792/-, namely, to Shri Pashabhai Ukabhai and Shri Bhikhbhai Manabhai. The respondent workman has received a sum of Rs.26,000/--. In our view, it will be just and proper to direct the Liquidator to pay a sum of Rs.1,00,000/-- by way of ex gratia payment to the respondent No.1 Shri Dhanaji Krishnaji, that too without considering it to be a precedence. Mr. Desai, the learned advocate appearing on behalf of the appellant Liquidator has assured us that the ex gratia payment as per the order will be paid to the respondent No.1 Shri Dhanaji Krishnaji by 10.4.2003. Accordingly, the appeal is disposed of in the above terms with no order as to costs.

9.1 While ending this order, we also appreciate the services rendered by the counsel appearing in the matter as well as the stand taken by them.

10. In view of the order passed in the main Appeal, Civil Application No.37 of 2001 does not survive and the same stands disposed of accordingly. Interim relief granted earlier stands vacated.

(D.K.Trivedi,J)

(K.M.Mehta,J)

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